



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, १७ सितम्बर, १९९४/२६ माघपद, १९१६

हिमाचल प्रदेश सरकार

प्रविष्टि

शिमला-४, १६ सितम्बर, १९९४

संख्या १-५६/९४-वि०म०.—हिमाचल प्रदेश प्रविष्टि और भूमि सुधार (संशोधन) विधेयक, १९९४ (१९९४ का विधेयक संख्यांक १६) जो आज दिनांक १३ सितम्बर, १९९४ को हिमाचल प्रदेश विधान मंडल में पुरःस्थापित हो

गया है की एक प्रति हि० प्र० विधान सभा की प्रक्रिया एव वाम सचालन नियमावली, 1973 के नियम 135 के अन्तर्गत सर्वसाधारण की सूचनाएं राजपत्र में मुद्रित करन हेतु प्रेषित की जाती है।

लक्ष्मण सिंह,
सांचन।

हिमाचल प्रदेश अधिभूति और भूमि सुधार (संशोधन) विधेयक, 1994

(विधान सभा में पेशा पुरःस्थापित रूप में)

हिमाचल प्रदेश टैनेन्सी एण्ड लेण्ड रिफार्मिंग ऐक्ट, 1972 (1974 का 8) का और संशोधन करने के लिए विधेयक ।

भारत गणराज्य के पन्तालीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश अधिभूति और भूमि सुधार संक्षिप्त नाम । (संशोधन) अधिनियम, 1994 है ।
2. हिमाचल प्रदेश टैनेन्सी एण्ड लेण्ड रिफार्मिंग ऐक्ट, 1972 (जिसे हममें इसके द्वारा 118 एक्कात मूल अधिनियम कहा गया है) में,—

(i) उप-धारा (1) और (2) के स्थान पर निम्नलिखित प्रतिस्थापित की जाएगी, अर्थात् :—

“(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including transfer by a decree of a civil court or for recovery of arrears of land revenue) by way of sale, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner shall be valid in favour of a person who is not an agriculturist.

Explanation.—For the purpose of this sub-section, the expression “transfer of land” shall include,—

- (a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non-agriculturist; and
- (b) an authorisation made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land.

(2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of,—

- (a) a landless labourer; or
- (b) a landless person belonging to a scheduled caste or a scheduled tribe; or
- (c) a village artisan; or
- (d) a landless person carrying on an allied agricultural pursuit; or

- (e) the State Government or Central Government, or a Government Company as defined in section 617 of the Companies Act, 1956 or a statutory body or Corporation or Board established by or under a statute and owned and controlled by the state or Central Government; or 1 of 1956
- (f) a person who has become non-agriculturist on account of acquisition of his land for any public purpose under the Land Acquisition Act, 1894; or 1 of 1894
- (g) a non-agriculturist who purchases or intends to purchase land for the construction of a house or shop, or purchases a built up house or shop, from the Himachal Pradesh State Housing Board, established under the Himachal Pradesh Housing Board Act, 1972, or from the Development Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 or from any other statutory corporation set up for framing and execution of house accommodation schemes in the State under any State or Central enactment; or 10 of 1972
12 of 1977
- (h) a non-agriculturist with the permission of the State Government for the purposes that may be prescribed :

Provided that a person who is non-agriculturist but purchases land either under clause (g) or with the permission granted under clause (h) of this sub-section shall, irrespective of such purchase of land, continue to be a non-agriculturist for the purposes of this Act :

Provided further that a non-agriculturist in whose case permission to purchase land is granted under clause (h) of this sub-section, shall put the land to such use for which the permission has been granted within a period of two years or a further such period not exceeding one year, as may be allowed by the State Government for reasons to be recorded in writing, to be counted from the day on which the sale deed of land is registered and if he fails to do so or diverts, without the permission of the state Government, the said user for any other purpose or transfer by way of sale, gift or otherwise, the land so purchased by him shall, in the prescribed manner, vest in the State Government free from all encumbrances.”;

- (ii) in sub-section (3) the words, brackets and figure “and such transfer shall be void *ab initio* and the land involved in such transfer, if made in contravention of sub-section (1), shall, together with structures, buildings or other attachments, if any, vest in the State Government free from all encumbrances” shall be omitted;
- (iii) after sub-section (3), the following sub-sections (3A), (3B), (3C), and (3D) shall be added, namely :—

“(3A) Where—

- (a) the Registrar or the Sub-Registrar, appointed under the Indian Registration Act, 1908, before whom any document pertaining to transfer of land is presented for registration, comes to know or has reason to believe that the transfer of land is in contravention of sub-section (1); or 16 of 1908

- (b) a Revenue officer either on an application made to him or on receipt of any information from any source, comes to know or has reason to believe that any land has been transferred or is being transferred in contravention of the provisions of sub-section (1) ;

Such Sub-Registrar, the Registrar or the Revenue Officer, as the case may be, shall make reference to the Collector of the District, in which land or any part thereof is situate, and the Collector, on receipt of such reference, or where the Revenue officer happens to be the Collector of the District himself, he either on an application made to him or on receipt of any information from any source comes to know or has reason to believe that any land has been transferred or is being transferred in contravention of the provisions of sub-section (1), shall after affording to the person who are parties to the transfer, a reasonable opportunity of being heard and holding an enquiry, determine whether the transfer of land is or is not in contravention of sub-section (1) and he shall, within 90 days from the date of receipt of reference made to him or such longer period as the Divisional Commissioner may allow for reasons to be recorded in writing, record his decision thereon and intimate the findings to the Registrar, Sub-Registrar or the Revenue Officer concerned.

- (3B) The person aggrieved by the findings recorded by the Collector, that a particular transfer of land is in contravention of the provisions of sub-section (1), may, within a period of 30 days from the date on which the order regarding such findings is made by the Collector or such longer period as the Divisional Commissioner may allow for reasons to be recorded in writing file an appeal to the Divisional Commissioner, to whom such Collector is subordinate, and the Divisional Commissioner may, after giving the parties an opportunity of being heard and, if necessary, after sending for the records of the case from the Collector and after making such enquiry as he thinks fit either personally or through an officer working under him, reverse, alter or confirm the order made by the Collector.

- (3C) The person aggrieved by the decision of the Divisional Commissioner in appeal under sub-section (3B), may, within a period of 30 days from the date of such decision or such longer period as the Financial Commissioner may allow for reasons to be recorded in writing, file an appeal to the Financial Commissioner who may, after giving the parties an opportunity of being heard and, if necessary, after sending for the records of the case and after making such enquiry as he may think fit, reverse, alter or confirm the order made by the Divisional Commissioner and the order made by the Financial Commissioner shall be final and conclusive.

(3 D) Where the Collector of the District under sub-section (3A), in case an appeal is not made within the prescribed period, or the Divisional Commissioner in appeal under sub-section (3B), or the Financial Commissioner in appeal under sub-section (3C), decides that the transfer of land is in contravention of the provisions of sub-section (1), such transfer shall be void *ab initio* and the land involved in such transfer together with structure, buildings or other attachments, if any, shall in the prescribed manner, vest in the State Government free from all encumbrances"; and

(iv) in sub-section (4),—

(a) for the brackets and figure "(3)", the figure, brackets and letter "(3D)" shall be substituted, and

(b) for the explanation the following shall be substituted, namely:—

"Explanation.—For the purpose of this section, the expression "land" shall include—

(i) land recorded as "Gair-mumkin", "Gair-mumkin Makan" or any other Gair-mumkin land, by whatever name called in the revenue records; and

(ii) land which is a site of a building in a town or a village and is occupied or let out not for agricultural purposes or purposes subservient to agriculture".

धारा 121-A
का अन्तः-
स्थापन।

(3) मूल अधिनियम की धारा-121 के पश्चात् निम्नलिखित नई धारा-121-A अन्तःस्थापित की जाएगी, अर्थात्:—

"121-A. Bar of Jurisdiction.— Save as otherwise expressly provided in this Chapter, the validity of any proceedings or orders taken or made under this Chapter shall not be called in question in any civil court or before any other authority".

उद्देश्यों और कारणों का कथन

हिमाचल प्रदेश टेनेन्सा एण्ड लैण्ड रिफॉर्म ऐक्ट, 1972 (1974 का 8) की धारा 118 के अर्थात् किसी व्यक्ति द्वारा किसी अधिपक्ष के पक्ष में भूमि का अन्तरण राज्य सरकार की पूर्ण अनुज्ञा से ही किसी विनिर्दिष्ट प्रयोजन के लिए किया जा सकता है। यह देखने में आया है कि कुछ अधिपक्षों ने उक्त उपबन्धों की मात देने के लिए मुक्तारनामा, बर्मायत, करारनामा, बेनामा संव्यवहार के निष्पादन और सिविल न्यायालयों से दुस्संधिपूर्ण न्यायालय ठिकियाँ उपास्त करने जैसे नए ढंग अपना लिए हैं। इसके अलावा धारा 118 की उप-धारा (2) के अर्थात् सहकारी सोसाइटियों/बैंकों को प्राप्त छूट का लाभ उठाने हुए कुछ अनेकतरफ, प्लाटों का विकास करने तथा गृह निर्माण करने और उक्त प्लाटों और गृहों का व्ययन करने के लिए सहकारी सोसाइटियाँ बना रहे हैं तथा वाणिज्य कार्य में लगे हुए हैं। धारा 118 की उप-धारा (4) का स्पष्टीकरण, धारा 118 के मुख्य उद्देश्य में अनादर सूचक होने के कारण इसका संशोधन किया जाना अपेक्षित है।

इसके प्रतिरुक्त उपबन्धों के दुरुपयोग से बचने और पूर्वोक्त अधिनियम की धारा 118 के उपबन्धों के उत्प्रेषण में भूमि अन्तरण का पता लगाने के लिए, उन व्यक्तियों को जो उक्त अन्तरणों में पक्षकार हैं या व्यक्तिगत प्रबन्ध प्रदान करने के पश्चात्, जांच करने के लिए कलक्टरों को सज्जन करना आवश्यक है। राजस्व अधिकारियों द्वारा ऐसे विषयों में विनिश्चयों का अन्तिम रूप देने में बिलम्ब करने के लिए मुद्दमंजोरों की प्रवृत्ति के दृष्टिगत, ऐसे विषयों में सिविल न्यायालयों की अधिकारिता का वर्जन करना भी आवश्यक समझा गया है।

विद्यमान उपबन्धों में उक्त कमियों को दूर करने की दृष्टि से अधिनियम में उपयुक्त संशोधन करना आवश्यक हो गया है।

यह विधेयक उपरोक्त उद्देश्यों की पूर्ति के लिए है।

गुलाब सिंह ठाकुर,
प्रधारी मन्त्री।

शिमला :

16 फ़रवरी, 1994.

वित्तीय मापन

विधेयक में प्रस्तावित उपबन्धों के अधिनियमित किए जाने पर राजस्व में कोई अनिश्चित घाव नहीं होगा और न ही उसमें कोई व्यय होगा। उभारा अधिनियम मूल अधिनियम के उपबन्धों की क्रियाविध करने के लिए नियोजित विद्यमान सरकारी तंत्र द्वारा लिया जाएगा।

प्रत्यायोजित विधान सम्बन्धी ज्ञापन

विधेयक के खण्ड 2 द्वारा संशोधन के लिए तथा प्रस्तावित मूल अधिनियम की धारा 118, सरकार को उन प्रयोजनों को विहित करने के लिए, जिनके लिए प्रभुत्व की भूमि क्रय करने की अनुमति मंजूर की जानी है और उस रीति को अधिनियमित करने के लिए नियम बनाने के लिए सशक्त करना है, जिसमें उप-धारा (1) के अन्तर्गत में कय की गई भूमि या अक्षुण्ण द्वारा सरकार की अनुमति से कय की गई भूमि को उस कार्य के लिए प्रयोग में नहीं लाया जाता है, जिसके लिए उसे कय किया जाना है या राज्य सरकार की अनुमति के बिना अन्य उपयोग में लाया जाता है, तो वह सरकार में विहित हो जाएगी।

(c) a village artisan; or

~~or a village artisan; or~~

AUTHORITATIVE ENGLISH TEXT

Bill No. 16 of 1994.

**THE HIMACHAL PRADESH TENANCY AND LAND REFORMS
(AMENDMENT) BILL, 1994**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

BILL

*further to amend the Himachal Pradesh Tenancy and Land Reforms Act, 1972
(Act No. 8 of 1974).*

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-fifth Year of the Republic of India, as follows :—

1. This Act may be called the Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1994. Short title.

2. In section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the principal Act,— Amendment of section 118.

(i) for sub-sections (1) and (2), the following shall be substituted, namely :—

“(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including transfer by a decree of a civil court or for recovery of arrears of land revenue) by way of sale, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner shall be valid in favour of a person who is not an agriculturist.

Explanation.—For the purpose of this sub-section, the expression “transfer of land” shall include,—

(a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non-agriculturist; and

(b) an authorisation made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land.

(2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of,—

(a) a landless labourer; or

(b) a landless person belonging to a scheduled caste or a scheduled tribe; or

(c) a village artisan; or

- (e) the State Government or Central Government, or a Government company as defined in section 617 of the Companies Act, 1956 or a statutory body or a Corporation or a Board established by or under a statute and owned and controlled by the state or Central Government; or 1 of 1956
- (f) a person who has become non-agriculturist on account of acquisition of his land for any public purpose under the Land Acquisition Act, 1894 ; or 1 of 1894
- (g) a non-agriculturist who purchases or intends to purchase land for the construction of a house or shop, or purchases a built up house or shop, from the Himachal Pradesh State Housing Board, established under the Himachal Pradesh Housing Board Act, 1972, or from the Development Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 or from any other statutory Corporation set up for framing and execution of house accommodation schemes in the State under any State or Central enactment; or 10 of 1972
12 of 1977
- (h) a non-agriculturist with the permission of the State Government for the purposes that may be prescribed :

Provided that a person who is non-agriculturist but purchases land either under clause (g) or with the permission granted under clause (h) of this sub-section shall, irrespective of such purchase of land, continue to be a non-agriculturist for the purposes of this Act :

Provided further that a non-agriculturist in whose case permission to purchase land is granted under clause (h) of this sub-section, shall put the land to such use for which the permission has been granted within a period of two years or a further such period not exceeding one year, as may be allowed by the State Government for reasons to be recorded in writing to be counted from the day on which the sale deed of land is registered and if he fails to do so or diverts, without the permission of the State Government, the said user for any other purpose or transfer by way of sale, gift or otherwise, the land so purchased by him shall, in the prescribed manner, vest in the State Government free from all encumbrances.” :

- (ii) in sub-section (3) the words, brackets and figure “and such transfer shall be void *ab-initio* and the land involved in such transfer, if made in contravention of sub-section (1), shall, together with structures, buildings or other attachments, if any, vest in the State Government free from all encumbrances” shall be omitted ;
- (iii) after sub-section (3), the following sub-sections (3A), (3B), (3C), and (3D) shall be added, namely : —

“(3A) Where —

- (a) the Registrar or the Sub-Registrar, appointed under the Indian Registration Act, 1908, before whom any document pertaining to transfer of land is presented for registration, comes to know or has reason to believe that the transfer of land is in contravention of sub-section (1); or 16 of 1908

- (b) a Revenue officer either on an application made to him or on receipt of any information from any source, comes to know or has reason to believe that any land has been transferred or is being transferred in contravention of the provisions of sub-section (1) ;

Such Sub-Registrar, the Registrar or the Revenue Officer, as the case may be, shall make reference to the Collector of the District, in which land or any part thereof is situate, and the Collector, on receipt of such reference or where the Revenue Officer happens to be the Collector of the District himself, he either on an application made to him or on receipt of any information from any source, comes to know or has reason to believe that any land has been transferred or is being transferred in contravention of the provisions of sub-section (1), shall after affording to the persons who are parties to the transfer, a reasonable opportunity of being heard and holding an enquiry, determine whether the transfer of land is or, is not in contravention of sub-section (1) and he shall, within 90 days from the date of receipt of reference made to him or such longer period as the Divisional Commissioner may allow for reasons to be recorded in writing, record his decision thereon and intimate the findings to the Registrar, Sub-Registrar or the Revenue Officer concerned.

- (3B) The person aggrieved by the findings recorded by the Collector, that a particular transfer of land is in contravention of the provisions of sub-section (1), may, within a period of 30 days from the date on which the order recording such findings is made by the Collector or such longer period as the Divisional Commissioner may allow for reasons to be recorded in writing file an appeal to the Divisional Commissioner, to whom such Collector is subordinate, and the Divisional Commissioner may, after giving the parties an opportunity of being heard and, if necessary, after sending for the records of the case from the Collector and after making such enquiry as he thinks fit either personally or through an officer working under him, reverse, alter or confirm the order made by the Collector.

- (3C) The person aggrieved by the decision of the Divisional Commissioner in appeal under sub-section (3B), may, within a period of 30 days from the date of such decision or such longer period as the Financial Commissioner may allow for reasons to be recorded in writing, file an appeal to the Financial Commissioner who may, after giving the parties an opportunity of being heard and, if necessary, after sending for the records of the case and after making such enquiry as he may think fit, reverse, alter or confirm the order made by the Divisional Commissioner and the order made by the Financial Commissioner shall be final and conclusive.

(3D) Where the Collector of the District under sub-section (3A), in case an appeal is not made within the prescribed period, or the Divisional Commissioner in appeal under sub-section (3B), or the Financial Commissioner in appeal under sub-section (3C), decides that the transfer of land is in contravention of the provisions of sub-section (1), such transfer shall be void *ab-initio* and the land involved in such transfer together with structures, buildings or other attachments, if any, shall in the prescribed manner, vest in the State Government free from all encumbrances.”; and

(iv) in sub-section (4),—

- (a) for the brackets and figure “(3)”, the figure, brackets and letter “(3D)” shall be substituted; and
- (b) for the explanation the following shall be substituted, namely:—

“Explanation.—For the purpose of this section, the expression “land” shall include—

- (i) land recorded as “Gair-mumkin”, “Gair-mumkin Makan” or any other Gair-mumkin land, by whatever name called in the revenue records; and
- (ii) land which is a site of a building in a town or a village and is occupied or let out not for agricultural purposes or purposes subservient to agriculture.”.

Insertion
of section
121-A

(3) After section 121 of the principal Act, the following new section 121-A shall be added, namely:—

“121-A. *Bar of Jurisdiction*.—Save as otherwise expressly provided in this Chapter, the validity of any proceedings or orders taken or made under this Chapter shall not be called in question in any civil court or before any other authority.”.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 118 of the principal Act as purposed to be amended by clause 2 of the Bill, empowers the State Government to make rules to prescribe the purposes for which permission to purchase land by non-agriculturist is to be granted and to lay down the manner in which the land purchased in contravention of sub-section (1) or is purchased with the permission of the State Government, by a non-agriculturist is not put to the use for which it is purchased, or he diverts it to other use, without the permission of the State Government, is to vest in the State Government. The proposed delegation is essential and normal in character.

STATEMENT OF OBJECTS AND REASONS

Under section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) the transfer of land by an agriculturist in favour of a non-agriculturist can only be made for a specific purpose with the prior permission of the State Government. It has been observed that some non-agriculturists have devised new methods, like execution of power of attorney, will, agreement, benami transaction and procuring collusive court decrees from civil courts, to circumvent the said provisions. Moreover by taking advantage of exemption to co-operative societies/banks under sub-section (2) of section 118, some unscrupulous elements are forming co-operative societies to develop plots and construct houses, and to dispose of the said plots and houses, and are indulging in the commercial ventures. Explanation to sub-section (4) of section 118 being derogatory to the main purport of section 118, requires to be amended.

Further to avoid the misuse of the provisions and detect the transfer of land in contravention of the provisions of section 118 of the Act *ibid*, it is necessary to empower the Collectors to make enquires after affording the reasonable opportunity to the persons who happen to be parties to said transfers. Keeping in view the tendency among the litigants to delay the finalisation of the decisions in such matters by the Revenue Officers by invoking the jurisdiction of civil courts, it has also been considered necessary to bar the jurisdiction of the civil courts in such matters.

With a view to do away with the said loopholes/shortcomings in the existing provisions, it has become necessary to make suitable amendments in the Act. This Bill seeks to achieve the aforesaid objectives.

GHULAT SINGH THAKUR,
Minister-in-charge.

SHIMLA:
The 12 September, 1994.

FINANCIAL MEMORANDUM

The provisions contained in the Bill, when enacted will not cause any additional income to, or expenditure from the State Exchequer. Its implementation will be done through the existing Government machinery employed for the implementation of the provisions of the principal Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 118 of the principal Act as purposed to be amended by clause 2 of the Bill, empowers the State Government to make rules to prescribe the purposes for which permission to purchase land by non-agriculturist is to be granted and to laydown the manner in which the land purchased in contravention of sub-section (1) or is purchased with the permission of the State Government, by a non-agriculturist is not put to the use for which it is purchased, or he diverts it to other use, without the permission of the State Government, is to vest in the State Government. The proposed delegation is essential and normal in character.